



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2004

Ms. Leticia E. Flores
State Auditor's Office
1501 N. Congress Avenue
Suite 4.224
Austin, Texas 78701

OR2004-3648

Dear Ms. Flores:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 201589.

The Texas State Auditor's Office (the "SAO") received a request for "any audit reports, related documentation, and correspondence, electronic or paper, concerning SAO Contract Audit Report #04-004, relating to the Texas State Technical College System and its component entities." You inform us that, upon request for clarification from the SAO, the requestor clarified his request to include "any correspondence or e-mail from the [Legislative Budget Board] or Coordinating Board concerning the reasons for [sic] and implementation of the funds distribution." See Gov't Code 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You further inform us that you have released some responsive information to the requestor, including a copy of Audit Report #04-004,¹ but argue that the remaining requested information is excepted from disclosure under sections 552.116 of the Government Code. We have considered your arguments and reviewed the submitted information.

Section 552.116 of the Government Code provides as follows:

¹You inform us that you made this report available to the requestor by directing him to a link to the report which is located on the SAO's website.

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, or a municipality is excepted from [public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

You state that the legislature has authorized the SAO to conduct "audits of all departments, including institutions of higher education." *See* Gov't Code § 321.013(a). You further state that, "at the Legislative Audit Committee's direction, the SAO also is authorized to conduct 'an audit or investigation of any entity receiving funds from the state,'" *id.*, and that "specifically, the SAO is authorized to conduct financial and compliance audits and 'investigations . . . as defined in [chapter 321] and specified in the audit plan.'" *See* Gov't Code 321.013(f). You inform us that the requirement to conduct the formula funding audit at issue is found in the General Appropriations Act for the 2004-2005 Biennium, Article III, Rider 9, a copy of which you provided to this office for review. In addition, you state that all of the information you have submitted to this office as Attachment F meets the definition of "audit working paper" because the audit team prepared and maintained this information in the course of conducting the formula funding audit and drafting the audit report. Finally, you state that the SAO followed professional standards in gathering, preparing, and maintaining documentation that detailed its work and provided evidence of its conclusions. *See* Gov't Code § 321.013(b) (SAO shall conduct audits in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public

Accountants, Governmental Accounting Standards Board, United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards); Open Records Decision No. 580 (1990).

Based on your representations and our review of the information at issue, we agree that the information submitted as Attachment F consists of audit working papers of the SAO, and therefore, the SAO may withhold this information from the requestor pursuant to section 552.116 of the Government Code.

You also request that this office issue a previous determination allowing the SAO to withhold requested audit and investigative working papers under section 552.116 of the Government Code in the future without seeking a ruling from this office. After due consideration, we have decided to grant your request. Therefore, this letter ruling shall serve as a previous determination under section 552.301(a) for such information. *See* Gov't Code § 552.301(a), (f); *see also* Open Records Decision No. 673 (2001).

This previous determination allows the SAO to withhold all information, documentary or otherwise, prepared or maintained by the SAO in conducting an audit or preparing an audit report under the authority of chapter 321 of the Government Code, including intra-agency and interagency communications and drafts of the audit report or portions of those drafts. However, if the working papers include information that is made public by a special or specific statute, the SAO may not withhold such information under section 552.116. *See* Gov't Code § 311.026 (where general statutory provision conflicts with specific provision, specific provision prevails as an exception to general provision); *see also* Open Records Decision Nos. 623 at 3 (1994) (exceptions in Public Information Act (the "Act") generally inapplicable to information that statutes expressly make public), 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information). In addition, information made expressly public under section 552.022 of the Government Code may not be withheld under section 552.116. Examples of such information include a completed report, audit, evaluation, or investigation made of, for, or by the SAO, and information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by the SAO. *See* Gov't Code § 552.022(a)(1), (3). To conclude, so long as the elements of law, fact and circumstances do not change so as to no longer support the findings set forth above, the SAO need not ask for a decision from this office again with respect to its audit working

papers when such information has been requested of the SAO under Chapter 552 of the Government Code. *See id.*

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

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sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" and last name "Pearle" clearly distinguishable.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 201589

Enc. Submitted documents

c: Mr. George Reamy
President, TFA Waco
288 Elkins Street
Lorena, Texas 76655
(w/o enclosures)